

REMARKS

Claims 1-192 are pending in the present application. The Examiner has placed the pending claims into six groups: Group I (claims 1-21, 33-71, 83-96, 114-147, 166, 168, 169, 177, 179, 180, 184 and 185), Group II (claims 22-32, 72-82, 167, 176, 178 and 187-189), Group III (claims 97-113, 172-174 and 183), Group IV (claims 148-158, 175, 186 and 190-192), Group V (claims 159-165) and Group VI (claims 170-171 and 181-182). Applicants respectfully traverse the restriction requirement and submit that the asserted bases for the restriction requirement are insufficient.

Group I includes claim 184. Claim 184 is directed to a machine-readable storage medium containing a group of instructions to cause a machine to implement a method for controlling a tone performance by use of a living body state detector. It recites the steps of the method. Claim 173 is directed to a method for controlling a tone performance by use of a living body state detector. Although claim 173 recites the same method steps of claim 184, the Examiner has placed claim 173 in Group III. Applicants respectfully traverse this restriction, because the Examiner has not established a "serious burden" of search and examination.

As set forth in MPEP § 803, there are two criteria for a proper requirement for restriction: (1) the inventions must be independent or distinct and (2) there must be a serious burden on the Examiner if restriction is required. Applicants respectfully note that there is no search burden present, because the search of Group I would be identical to the search of Group III with respect to claims 173 and 184. Both claims have been classified in the same class, i.e., class 84, and recite the same method steps. Moreover, the Examiner's restriction between Group I and Group III is based on combination and subcombination, respectively (see page 3, paragraph 3 of the Office Action). Any search relating to the combination (Group I) must include the subcombination (Group III). Indeed, the Examiner's discussion in the cited section of the Office Action is silent regarding the burden of search. Accordingly, Applicants respectfully request that

the restriction requirement be withdrawn. Applicants submit that claim 173 should be placed in Group I with claim 184 and claim 114, which is directed to a control system.

Group I also includes claim 185. Claim 185 is directed to a machine-readable storage medium containing a group of instructions to cause a machine to implement a method of controlling a tone performance by use of a living body state detector and recites the steps of the method. Group III includes claim 174 which is directed to a method of controlling a tone performance by use of a living body state detector and recites the same steps as claim 185. For the same reasons as discussed above with respect to claims 173 and 184, Applicants respectfully submit that the Examiner has not established a “serious burden” of search and examination. Accordingly, Applicants respectfully request that the restriction requirement be withdrawn. Applicants submit that claim 174 should be placed in Group I with claim 184 and claim 131, which is directed to a control system.

Group I also includes claim 83. Claim 83 is directed to a control system and recites in part a data generator adapted to generate guide data and a transmitter adapted to transmit the guide data. Group VI includes claim 171 which is directed to a method for providing guide data and recites in part steps of generating guide data and transmitting guide data. Group VI also includes claim 182 which is directed to a machine-readable storage medium containing a group of instructions to a cause a machine to implement a method and recites the same method steps as claim 171.

The Examiner has not provided an explanation for imposing a restriction requirement between Group I and Group VI. Furthermore, Applicants respectfully submit that the Examiner has not established a “serious burden” of search and examination. Claims 83, 171 and 182 have been classified in the same class, i.e., class 84. Accordingly, Applicants respectfully request that the restriction requirement be withdrawn. Applicants submit that claims 171 and 182 should be placed in Group I with claim 83.

Similarly, Group II includes claim 72, which is directed to a motion detector for movement with a performer. Group VI includes claims 170 and 181. Claim 170 is directed a method for providing guide data for a performer operating a motion detector. Claim 181 is directed to a machine-readable storage medium containing a group of instructions to cause a machine to implement a method and recites the same method steps of claim 170.

As in the case of Group I and Group VI, the Examiner has not provided an explanation for imposing a restriction requirement between Group II and Group VI. As in the case of claims 83, 171 and 182, Applicants respectfully submit that the Examiner has also not established a "serious burden" of search and examination. Claims 72, 170 and 181 have been classified in the same class, i.e., class 84. Accordingly, Applicants respectfully request that the restriction requirement be withdrawn. Applicants submit that claims 170 and 181 should be placed in Group I with claim 72.

If the Examiner maintains the restriction requirement as set forth in the Office Action, Applicants hereby elect Group I (claims 1-21, 33-71, 83-96, 114-147, 166, 168-169, 177, 179, 180, 184 and 185) with-traverse for the reasons stated above.

Applicants expressly reserve their right under 35 U.S.C. § 121 to file a divisional application directed to the nonelected subject matter during the pendency of this application, or an application claiming priority from this application.

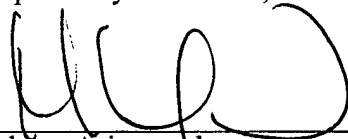
Applicants request examination of the elected subject matter on the merits.

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that an extension and/or other relief is required, Applicants petition for any required relief including extensions of time and authorizes the Assistant Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. 393032022200. However, the Assistant Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated: November 4, 2002

Respectfully submitted,

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